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Attorney for THE LESSIN MEDIA COMPANY, D.B.A. THE INFORMATION and
MATT DRANGE, acting on their own behalf and on behalf of the People of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

THE LESSIN MEDIA COMPANY,
D.B.A. THE INFORMATION and
MATT DRANGE

Petitioners/Plaintiffs,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, CHANCELLOR,
UNIVERSITY OF CALIFORNIA
(BERKELEY) and DOES 1 THROUGH
100, INCLUSIVE

Respondents/Defendants

Case No.

**VERIFIED PETITION FOR
ALTERNATE AND PEREMPTORY
WRIT OF MANDATE; COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF RE
ACCESS TO RECORDS AND
INFORMATION**

INTRODUCTION

THE INFORMATION and MATT DRANGE (Petitioners) seek records controlled, actually and/or constructively possessed and/or used by THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, CHANCELLOR, UNIVERSITY OF CALIFORNIA (BERKELEY) (Respondents) that Respondents are wrongfully withholding. Petitioners seek a writ of mandate, declaratory and injunctive relief to enforce Petitioner's constitutional, statutory and common law substantive and procedural rights to access the records Petitioners request and to enforce Respondents' duties to take effective steps to avoid delay and provide Petitioners with access to the records they seek.

JURISDICTION

1. The California Constitution provides:

- a. the people have the right of access to information concerning the conduct of the people's business; and
- b. statutes, court rules, or other authority shall be broadly construed to further the people's right of access information concerning the people's business, including but not limited to the writings of public officials; whereas statutes, court rules, or other authority shall be narrowly construed if an interpretation limits the same right of access. (Cal. Const. Art. I § 3(b) (1) and (2).)

2. A document within the actual or constructive possession of a local agency that containing information relating to the conduct of the public's business is a public record.

3. Delay violates the California Public Records Act and public agencies have an affirmative duty to avoid delay. (Government Code §§ 6258 and 6253(b), (c), (d) and (f); *see also, Open Am. v. Watergate Special Prosecution Force* (1976) 547 F.2d 605, 617 [delay in providing access to records is tantamount to denying access].)

4. Upon receiving a request for a copy of a public record that an agency controls, the agency must perform duties on behalf of and to the benefit of the public, including but not limited to:

- a. replying to the request in writing within 10 days if the local agency intends on withholding records responsive to the request (Government Code § 6253 (c));
- b. affirmatively assisting the requester to overcome barriers preventing prompt access to the records/information the requester seeks. (Government Code § 6253.1);
- c. if the agency alleges that any of the information within any record responsive to the request is exempt from disclosure, the agency must produce the records with the allegedly exempt information redacted (Government Code § 6253 (a));
- d. if the requested records are maintained in an electronic form, the agency must provide access to or copies of these records in the electronic format in which the records are maintained (Government Code § 6253.9); and
- e. if a citizen asks for copies, a public agency can charge only the “direct costs” for making copies (Government Code §§ 6253(b) and 6253.9(a)(2)).

5. Whenever a member of the public believes that a local agency is failing in part or in whole to perform the duties necessary to provide the public with access to a record, that member of the public may bring a verified petition to the superior court of the county where the records are situated for an order requiring the officer or person charged with withholding the records to disclose the public records/information. (Government Code §§ 6258 and 6259(a).)

6. Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public

- a. the court shall order the officer or person charged with withholding the records to disclose the records or show cause why he or she should not do so (Government Code § 6259(a));
- b. if the Court finds that Respondent’s decision to refuse disclosure is not

justified, the Court shall order Respondent to make the record public.
(Government Code § 6259(b).)

7. Code of Civil Procedure § 1085 et al. provides the public with the right to enforce, via court order, the performance of ministerial duties and/or the right to correct abuses concerning discretionary duties.

8. Code of Civil Procedure § 1060 provides the public the right to seek a determination of the parties' statutory and/or contractual rights.

9. Code of Civil Procedure § 525 et al. provides the public with the right to injunctive relief to prevent or address irreparable injury.

10. Independent of the California Constitution and California statutes, California common law provides the public with the right to access records pertaining to the public's business. (*Sander v. State Bar of California* (2013) 58 Cal.4th 300; *Mushet v. Department of Public Service* (1917) 35 Cal. App. 630.)

THE PARTIES

11. Petitioner realleges Paragraphs 1 through 10 as though fully incorporated herein.

12. Petitioner THE LESSIN MEDIA COMPANY, D.B.A. THE INFORMATION is a news media outlet that reports on matters of public interest and concern, informing the public about public agency conduct of the public business.

13. Petitioner MATT DRANGE is a private citizen and investigative journalist reporting on matters of public interest and concern, informing the public about public agency conduct of the public business.

14. Respondent REGENTS OF THE UNIVERSITY OF CALIFORNIA are the governing body of state agency operating under and subject to the laws of the State of California, including but not limited to the CPRA.

15. Petitioner does not know the true names and capacities of Does 1 through 100 and therefore sues these Respondents fictitiously. Petitioner will allege their true names and capacities when they are ascertained.

16. Petitioner realleges Paragraphs 1 through 16 as though fully incorporated herein.

17. On June 4, 2018, Petitioner requested access to and copies of “Any and all correspondence, including but not limited to emails, memos, voice mail messages and text messages, sent to or from University staff, its representatives and affiliates, and employees and representatives of Huawei Technologies Co., Ltd, from June 1, 2016 through the day this request is processed.”

18. The initial request sought access to identifiable public records that memorialized communications sent to and received by public officials and public employees containing information relating to the conduct of the public's business that Respondent retains, prepared, owns, uses or constructively possesses.

19. Through the next several months Respondents engaged in a pattern of conduct that unnecessarily delayed and continues to unnecessarily delay public access to identifiable public records that memorialized communications sent to and received by public officials and public employees containing information relating to the conduct of the public's business that Respondent retains, prepared, owns, uses or constructively possesses, including but not limited to:

- a. taking more than 10 days to respond to records requests;
- b. failing to respond to Petitioner's requests without a follow-up demand;
- c. failing to respond to Petitioner's requests by the dates Respondents promised;
- d. failing to effectively assist requesters to access the records and information they are seeking;
- e. asserting exemptions that did not and do not apply to the records and information Petitioner seeks to access;
- f. failing to segregate exempt information from nonexempt information;
- g. charging Petitioner and the public a copy an unlawfully excessive charge for copies of public records;

1 h. failing to produce records responsive to Petitioner's requests on a
2 "rolling" basis, instead insisting that records located and reviewed be withheld until
3 all records responsive to Petitioner's records requests were located and reviewed.

4 20. On March 4, 2019, Petitioner's counsel renewed Petitioner's request for
5 "access to and copies of (1) all communications between UC Berkeley personnel pertaining
6 to Huawei Technologies Co., Ltd.; and (2) all communications between UC Berkeley
7 personnel and Huawei Technologies Co., Ltd. (Petitioner's "First Request")." In the same
8 correspondence, Petitioner's Counsel requested, on Petitioner's behalf:

- 9 ● Records sufficient for Mr. Drange to determine how much UC Berkeley has charged
10 for copies of public records over the last 20 years. Please do not produce all records
11 that pertain to UC Berkeley's copy charge history. Mr. Drange merely seeks access
12 to and copies of records sufficient for him to determine how much per page for copies
13 over the last 20 years.
- 14 ● All records pertaining to the implementation of UC Berkeley's current policy
15 charging \$.20 per page for copies of records. A copy of the policy itself is only one
16 record responsive to this request. Mr. Drange seeks access to and copies of any
17 agendas, minutes, memoranda, cost studies, etc. that document how UC Berkeley
18 determined that \$.20 per page is UC Berkeley's direct copy costs and how that
19 determination was implemented.

20 (Petitioner's "Second Request.")

21 21. On March 12, 2019, Respondent delivered a form letter – virtually identical
22 to other correspondence Respondent sent Petitioner pertaining to Petitioner's records
23 requests - via email to Petitioner's counsel responding to Petitioner's Counsel's March 4,
24 2019, letter, stating:

25
26 This is to acknowledge your California Public Records Act (CPRA)
27 request below. A search for responsive documents is currently
28 underway. Records identified as responsive to your request will be
reviewed, and made available for your access, in accordance with
relevant law and University policy.

1 The identification and collection of potentially responsive records is
2 only the first step in the CPRA response process. The collected
3 records must be reviewed by this office to ensure that they are in
4 fact responsive to your request and to assess whether any legal
5 privileges or exemptions from disclosure are applicable and
6 whether redactions may be required to protect individuals' rights to
7 privacy. Please also bear in mind that we are concurrently fulfilling
8 numerous other requests, many of which were received before
9 yours and that we generally process requests in the order in which
10 they are received. The current timeframe for fulfillment of most
11 requests is ten weeks, although this may vary due to the nature and
12 complexity of the request.

13 Although the requested records have not yet been fully identified,
14 based on the terms of the request, we have made a preliminary
15 determination that the request likely does seek disclosable records
16 within the possession of the University. This office will provide you
17 with a status update after the requested records have been
18 thoroughly reviewed.

19 Please note that CPRA allows agencies to make records available
20 "upon payment of fees covering direct costs of duplication."
21 Government Code section 6253(b). The University reserves its right
22 to recoup duplication costs. The charge is \$0.20 per page for
23 copies, and payment is required before release of the records.
24 Once we obtain an accurate page count, we will inform you of the
25 anticipated total cost.

26
27 22. Respondent's March 12, 2019, responding to Petitioner's Counsel's March 4,
28 2019 letter was tantamount to a denial of Petitioner's First and Second Requests. From
2019 March 12, 2019, to the present, Respondent has not communicated at all pertaining to
2019 Petitioner's First or Second Requests.

2019 FIRST CAUSE OF ACTION

2019 (Traditional Mandamus – as to all Respondents – CCP §1085 et seq.)

2019 23. Petitioner realleges Paragraphs 1 through 22 as though fully incorporated
2019 herein.

2019 24. As a member of the public and a holder of the aforementioned constitutional
2019 right to access public records, Petitioner has a present beneficial interest in the outcome of
2019 these proceedings and has a clear, present and substantial right to the relief sought herein.

(Cal. Const. Art. 1 § 3; Government Code §§ 6253, 6253.9, 6258, 6259.)

25. Respondent failed to perform its duties owed to the public and to Petitioner, including but not limited to (1) respond to Petitioner's records request within 10 days; (2) request additional time to respond to Petitioner's records request; (3) take affirmative steps to assist Petitioner to access the records he requested provide records; (4) provide access to any of the records or information Petitioner requested; (5) segregate exempt information from nonexempt information, and otherwise engaged in a pattern of conduct that caused and continues to cause unnecessary delay.

26. Petitioner requests relief as specified below.

SECOND CAUSE OF ACTION

(Writ of Mandate– as to all Defendants – Government Code § 6258)

27. Petitioner realleges Paragraphs 1 through 26 as though fully incorporated herein.

28. Respondent failed to provide and is wrongfully denying Petitioner access to the records and information Petitioner requested.

29. Petitioner requests relief as specified below.

THIRD CAUSE OF ACTION

(Injunctive Relief – as to all Defendants – Government Code § 6258)

30. Petitioner realleges Paragraphs 1 through 29 as though fully incorporated herein.

31. Petitioner seeks to enforce her constitutional, statutory and common law rights to obtain copies of records related to the conduct of the public's business, the violation of which automatically establishes irreparable harm that cannot be remedied through an action at law. (*Smith v. Novato Unified School Dist.* (2007) 150 Cal.App.4th 1439, 1465 (quoting *Elrod v. Burns* (1976) 427 U.S. 347, 373).)

32. Unless Petitioner is provided access to and copies of the documents and information he seeks, the public's right to examine records pertaining to the public's business will continue to be frustrated and Petitioner's constitutional rights will continue

1 to be violated.

2 33. Petitioner has no plain, speedy, and adequate remedy at law other than this
3 action. Respondent has a clear, mandatory and ministerial duty to provide Petitioner with
4 copies of the records he seeks. If Respondent's decision to deny Petitioner copies of these
5 records is a discretionary act, then Respondent has abused that discretion.

6 34. Petitioner requests relief as specified below.

7 **FOURTH CAUSE OF ACTION**

8 **(Declaratory Relief – as to all Defendants – Government Code § 6258)**

9 35. Petitioner realleges Paragraphs 1 through 34 as though fully incorporated
10 herein.

11 36. An actual and existing controversy exists between the parties manifest by
12 Petitioner's exercise of her right to access and obtain copies of public records and
13 Respondent's patent refusal to satisfy its duties upon receiving a reasonable request for
14 public records. Respondent's actions and inactions described herein violated and continue
15 to violate the California Constitution (Art. I § 3(b)(1) and (2)), and Government Code §
16 6250 et seq. and California common law recognizing and assuring the public access to
17 records pertaining to the public's business.

18 37. Petitioner seeks a judicial declaration that Respondent has violated and/or
19 continues to violate these constitutional, statutory and administrative provisions and a
20 declaration determining the respective rights and duties of the parties.

21 38. Petitioner requests relief as specified below.

22 **PRAYER FOR RELIEF**

23 **Traditional Mandamus:**

- 24 ● A peremptory writ of mandate ordering Respondent to carry out all ministerial duties
25 and correct all abuses of discretion in order to (2) promptly provide Petitioner and
26 all citizens access to and copies of all documents responsive to their records requests;
27 and (2) stop improperly charging the public \$.20 per page for copies of public
28 records.

- An alternative writ of mandate ordering Respondent to provide the relief requested above or to show cause why such an order should not issue.
- Pursuant to the California Public Records Act (Government Code § 6253) Petitioner requests that the Court order Respondent to show cause why it should not be compelled to comply with all ministerial duties, correct all abuses of discretion pertaining to Respondent's performance of any discretionary duties, and to provide access to and copies of the records Petitioner seeks and stop improperly charging the public \$.20 per page for copies of public records.
- An award of costs and fees.
- Any other relief the Court deems just and proper.

Writ of Mandate per the California Public Records Act:

- A peremptory writ of mandate ordering Respondent to provide Petitioner with access to and copies of all documents responsive to Petitioner's First and Second Requests in electronic format; or
- An alternative writ of mandate ordering Respondent to provide the relief requested above or to show cause why such an order should not issue.
- An award of costs and fees.
- Any other relief the Court deems just and proper.

Injunctive Relief per the California Public Records Act:

- The issuance of a permanent injunction ordering Respondent to provide Petitioner with access to and copies of all documents responsive to Petitioner's First and Second records request in electronic format and a permanent injunction ordering Respondent to stop improperly charging the public \$.20 per page for copies of public records.
- An award of costs and fees.
- Any other relief the Court deems just and proper.

Declaratory Relief per the California Public Records Act:

- The issuance of a declaratory judgment that,

1. pursuant to Art. I § 3(b)(1) and (2) of the California Constitution, and the California Public Records Act (Government Code § 6250 et seq.) Respondents have the duties described herein the fulfillment of which are necessary to provide to the public, including but not limited to Petitioner, with access to and copies of public records Petitioner seeks regardless of the form of these writings or where these writings are located and/or maintained.

2. Respondents violated Art. I § 3(b)(1) and (2) of the California Constitution, and/or the California Public Records Act (Government Code § 6250 et seq.).

- An award of costs and fees.
- Any other relief the Court deems just and proper.

Dated: May 29, 2019

PAUL NICHOLAS BOYLAN, ESQ.

Paul Nicholas Boylan, Attorney for Petitioner,
MATT DRANGE

VERIFICATIONS

I, MATT DRANGE, declare:

1. I am a Petitioner in this action. I make this verification of my own knowledge.

I hereby verify that the factual matters stated in this Petition/Complaint are known to me personally and that they are true.

I declare under penalty of perjury under the laws of California that the foregoing is true and that this verification was executed in San Francisco, California, on May 29, 2019.

MATT DRANGE

I, JESSICA LESSEN, declare:

2. I am THE LESSIN MEDIA COMPANY's founder THE INFORMATION's Editor-in-Chief. THE LESSIN MEDIA COMPANY, D.B.A. THE INFORMATION is a

1 Petitioner in this action. I make this verification of my own knowledge. I hereby verify
2 that the factual matters stated in this Petition/Complaint are known to me personally and
3 that they are true.

4 I declare under penalty of perjury under the laws of California that the foregoing is
5 true and that this verification was executed in San Francisco, California, on May 29, 2019.

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8 JESSICA LESSEN
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